

CHAPTER 75-02-04
CHILD SUPPORT ENFORCEMENT

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75-02-04-01. Definitions.

1. "Agency" means the single and separate organization unit within the North Dakota department of human services responsible for the administration of the North Dakota state plan under title IV-D of the Social Security Act, as amended [42 U.S.C. 651 et seq.].
2. "Program" means the child support enforcement program under title IV-D of the Social Security Act, as amended [42 U.S.C. 651 et seq.].
3. "Regional unit" means one of the various local child support enforcement offices which have been established either pursuant to a joint exercise of governmental power by the various counties within a particular area in this state, or by a purchase of service agreement, for the purpose of performing the functions and assuming the responsibilities which have been delegated by the agency or prescribed by state or federal law.
4. "State plan" means the comprehensive statement, submitted by the agency and approved by the department of health and human services regional office of child support enforcement, which describes the nature and scope of the program in this state, including assurances that the program will be administered in conformity with title IV-D of the Social Security Act, as amended [42 U.S.C. 651 et seq.], the rules

and regulations promulgated thereunder, and all applicable official issuances of the department of health and human services.

History: Effective September 1, 1979; amended effective July 1, 2006.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-03; 45 CFR 301.1

75-02-04-01.1. Purpose. This chapter is necessary to comply with federal regulations promulgated under title IV-D of the Social Security Act, as amended [42 U.S.C. 651 et seq.], which require that there be an organizational structure and staff to provide for the administration and supervision of child support functions on a statewide basis in accordance with equitable standards for administration that are mandatory throughout the state, and to accomplish the purpose, goals, and objectives as specified therein.

History: Effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-02; 45 CFR Part 302

75-02-04-02. Organization. The agency shall consist of a central office located in Bismarck, regional units located in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and such other locations as may be necessary for the proper and efficient operation of the plan.

History: Effective September 1, 1979.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-02; 45 CFR 302.12

75-02-04-03. Authority.

1. For all children who are eligible for the services under the state plan, the agency shall, when necessary, establish paternity, locate the absent parent or parents legally liable for the support of the child or children, and secure support for the child or children.
2. The agency is authorized to:
 - a. Enter into cooperative agreements with any state or local agency or official to perform the functions under the state plan.
 - b. Purchase services from any attorney, person, or public or private agency to perform the functions under the state plan.
 - c. Enter into written agreements or cooperative arrangements with appropriate courts, law enforcement agencies, or tribal councils, including a single official who has the legal authority to enter into such cooperative agreements on behalf of such courts, agencies, or tribal councils.

- d. Cooperate with any other state in establishing paternity, locating an absent parent who may be present in this state, or in securing compliance by an absent parent who is present in this state with an order issued by a court of such other state.
- e. Establish and operate a parent locator service and accept requests to utilize the federal parent locator service.

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-02, 50-09-03; 45 CFR 302.31; 45 CFR 302.34; 45 CFR 302.35; 45 CFR 302.36

75-02-04-04. Assignment of rights of support. Repealed effective December 1, 1981.

75-02-04-05. Eligibility for services.

1. Any person receiving benefits under the aid to families with dependent children program or who, upon request for child support enforcement services, would be eligible to receive benefits under such program if application were made, shall not be assessed a charge for the services provided by the agency or regional unit.
2. Upon application, the agency or regional unit shall provide child support collection, location, and paternity determination services to any individual who is not a recipient of or otherwise eligible for benefits under the aid to families with dependent children program.
3. The agency or regional unit shall advise these individuals at the time of application that the administrative costs incurred pursuant to the services rendered may be deducted from the amount recovered in the event the legislative appropriation for such services is insufficient to defray such costs.

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-06; 45 CFR 302.33

75-02-04-05.1. Filing of copies of documents. The filing of the original acknowledgment of assignment of support rights, assignment of support rights, or non-aid to families with dependent children application for IV-D services, or a duplicate copy thereof, with the office of the clerk of court shall constitute authorization for that office to direct and forward child support collections to the assignee named in the instrument.

History: Effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-06; 45 CFR 232.11; 45 CFR 302.33

75-02-04-06. Establishment of paternity. Repealed effective December 1, 1981.

75-02-04-07. Establishment of support obligation. Repealed effective December 1, 1981.

75-02-04-08. Location of absent parent. Repealed effective December 1, 1981.

75-02-04-09. Cooperation with other states. Repealed effective December 1, 1981.

75-02-04-10. Cooperative arrangements. The agency shall enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials for the purpose of assuring the performance of their duties in carrying out the provisions and intent of the child support program. The agreements shall provide for:

1. The exchange of pertinent information with courts and law enforcement officials needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of information obtained from the agency which administers the aid to families with dependent children program, to court or law enforcement officials, to the extent that such information is relevant to the duties to be performed.
2. Assistance to the agency in carrying out the program.
3. The investigation and prosecution of fraud directly related to paternity and child support.
4. The discharge of each of the statutory obligations of each court or law enforcement official relative to the establishment of paternity; enforcement and collection of child support obligations, specifically with respect to properly referred IV-D cases involving children whose eligibility for aid to families with dependent children is based upon the continued absence of one or both parents from the home, and non-aid to families with dependent children IV-D cases; and the use of reciprocal arrangements adopted with other states in appropriate cases.
5. The reimbursement of costs and fees to courts and law enforcement officials, for assistance in carrying out the program, to the extent permitted by 45 CFR 304.21 and 304.22, and approved by the agency.

6. Permitting authorized state and federal personnel to monitor all IV-D cases and records in any offices performing functions under the agreement.

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-08; 45 CFR Part 302

75-02-04-11. Distribution of child support collections. Repealed effective December 1, 1981.

75-02-04-12. Incentive payments.

1. The agency shall make an incentive payment to any county of this state which participates in the costs of the program, taking into account the efficiency and effectiveness of the program activities carried out by that county.
2. Of the total amount of incentive payments made available to the state by the office of child support enforcement of the United States department of health and human services, in each biennial period, twenty-five percent must be retained by the agency in recognition of participation in the costs of the statewide program; the administration of the state plan in conformity with the specific requirements of the department of health and human services; the effective operation of a central parent locate office; the efficiency of receipting and distributing collections from a single centralized location; and the efficient and effective collection of past-due support through federal and state income tax refund offset programs.
3. Of the total amount of incentive payments made available to the state by the office of child support enforcement of the United States department of health and human services, in each biennial period, seventy-five percent must be paid by the agency to all the counties which participate in the costs of the program. The agency shall calculate the incentive to be paid to the counties comprising each regional unit, and shall distribute to each county the proportion of the incentives so calculated that is the same proportion as that county's share of regional unit expenditures borne by all counties in that region.
4. Of the total amount of incentive payments made available to counties, those payments which are made to the agency without regard to the state ratio of collections to total IV-D administrative costs, as provided in 42 U.S.C. section 658(b)(1)(A) and (B), will be distributed to the counties comprising each regional unit, based on cost effectiveness. The total collections within each regional unit will be divided by total expenditures within each regional unit. The resulting ratios will be added together. Each regional unit's individual ratio will be divided by the total of all ratios to determine the share of incentive payments of

this type to be distributed within each region. This calculation will be made quarterly, and incentives of this type will be paid quarterly. For the purposes of making the calculation described in this subsection, total collections will include collections made in Indian reservation cases, but total expenditures will not include Indian reservation project expenditures.

5. Of the total amount of incentive payments made available to counties, those payments which are made to the agency based upon the state's ratio of collections to total IV-D administrative costs will be distributed to the counties comprising each regional unit based on paternity establishment, support obligation establishment, and successful location of obligors.
 - a. Sixty percent of the incentive payments of this type will be distributed to the counties comprising each regional unit based on paternity establishment. The number of paternities established in each region will be divided by the number of open cases in each region. The resulting paternity-to-caseload ratios for all regions will be added together. Each region's individual paternity-to-caseload ratio will be divided by the total paternity-to-caseload ratio to determine the percentage of incentive payment of this type to be distributed within each region.
 - b. Thirty percent of the incentive payments of this type will be distributed to the counties comprising each regional unit based on support obligation establishment. The number of support obligations established in each region will be divided by the number of open cases in each region. The resulting support-establishment-to-caseload ratios for all regions will be added together. Each region's individual support-establishment-to-caseload ratio will be divided by the total support-establishment-to-caseload ratio to determine the percentage of incentive payment of this type to be distributed within each region.
 - c. Ten percent of the incentive payments of this type will be distributed to the counties comprising each regional unit based on the successful location of obligors ("locates"). The number of locates made in each region will be divided by the number of open cases in each region. The resulting locate-to-caseload ratios for all regions will be added together. Each region's individual locate-to-caseload ratio will be divided by the total locate-to-caseload ratio to determine the percentage of incentive payment of this type to be distributed within each region.
 - d. For the purposes of making the calculations described in this subsection, the number of paternities established, the number of

support obligations established, the number of locates, and the caseload will include Indian reservation cases.

- e. The calculations described in this subsection will be made, and the calculated amounts distributed, annually after the end of the federal fiscal year.

Effective January 1, 2008, section 75-02-04-12 is repealed.

History: Effective September 1, 1979; amended effective December 1, 1981; October 1, 1989; July 1, 2006.

General Authority: NDCC 50-09-02

Law Implemented: 45 CFR 302.52

75-02-04-12.1. Incentive payments.

1. Except as otherwise provided in subsections 5 and 6, twenty-five percent of the total amount of incentive payments available for distribution under North Dakota Century Code section 50-03-10 must be retained by the agency and seventy-five percent must be paid to the counties participating in the costs of the statewide program as provided in this section.
2. **(Effective through December 31, 2007)** Eighty percent of the county portion of incentive payments will be distributed to the regional units based on federal performance measures and section 75-02-04-12. For distributions during calendar year 2006, one-third of the amount distributed under this subsection will be based on federal performance measures and two-thirds will be distributed under section 75-02-04-12. For distributions during calendar year 2007, two-thirds of the amount distributed under this subsection will be based on federal performance measures and one-third will be distributed under section 75-02-04-12. Twenty percent of the county portion of incentive payments shall be distributed as performance incentives under subsection 3.

(Effective beginning January 1, 2008) Eighty percent of the county portion of incentive payments will be distributed to the regional units based on federal performance measures. Twenty percent of the county portion of incentive payments shall be distributed as performance incentives under subsection 3.

3. The total amount of performance incentives available for distribution under this subsection will be allocated among all applicable federal performance measures by weight. Any increase in a regional unit's performance from the prior year on each measure will be multiplied by the regional unit's pro rata share of the state's total caseload or collections to determine the regional unit's proportionate share of the incentives distributed for that measure.

4. The agency may retain up to twenty percent of the amounts payable to a regional unit under this section, in increments of five percent per notice, if the agency determines that people do not receive a level of service from the regional unit that is substantially similar to the level of service provided by other regional units to similarly situated people. As used in this subsection, "level of service" means the manner in which a regional unit provides services in child support cases and does not include the overall performance of a regional unit on a federal performance measure. Prior to retaining funds under this subsection, the agency must notify the affected regional unit in writing of the inconsistent level of service and issue a directive under North Dakota Century Code section 50-09-02 indicating the steps needed to resolve the inconsistency. A regional unit that complies with the directive within thirty days of the date the notice was mailed, or any longer period authorized by the agency, will receive the retained funds. If the directive is not honored within this period, the retained funds will not be distributed to the regional unit.
5. The agency shall hold any funds withheld under subsection 4 until the fourth notice of inconsistency has been issued and the time has expired for the regional unit to comply with the directive in the notice. If the regional unit does not comply with the directive in the fourth notice, the agency shall distribute the retained funds to other regional units or continue holding the funds on behalf of the regional unit until it complies with the directive.

History: Effective July 1, 2006.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-03-10, 50-09-15.1, 50-09-33, 50-09-34; 42 USC 658a; 42 CFR Part 305

75-02-04-13. Maintenance of records. The agency or regional unit shall maintain those records, necessary for the proper and efficient operation of the plan, required by 45 CFR 302.15. For all cases in which there is an assignment pursuant to North Dakota Century Code section 50-09-06 (except where good cause for refusing to cooperate exists) or where there is an application for services, the agency or regional unit shall establish a case record which shall contain all information collected pertaining to the case. The case record shall include those items required to be maintained by 45 CFR 303.2.

History: Effective September 1, 1979; amended effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-08; 45 CFR 302.15; 45 CFR 303.2

75-02-04-14. Safeguarding of information. Repealed effective December 1, 1981.

75-02-04-15. Assurance of compliance. Any individual, official, or local jurisdiction providing services to or in the administration of the child support

enforcement program shall, in writing, assure compliance with federal and state laws and regulations prohibiting discrimination on the basis of the race, color, religion, national origin, sex, political beliefs, handicap, pregnancy, or age of an applicant for a recipient of services; or prohibiting discrimination on the basis of the race, color, religion, national origin, sex, political beliefs, or solely on the basis of handicap, pregnancy, or age of an employee or applicant for employment.

History: Effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 34-01-17; 20 USC 1681, et seq.; 29 USC 201, et seq.; 29 USC 621, et seq.; 29 USC 793; 29 USC 794; 42 USC 2000 (d); 42 USC 2000 (e); 45 USC 6101, et seq.; 5 CFR 900.607; 24 CFR 1; 29 CFR 800; 29 CFR 850; 29 CFR 1600, et seq.; 41 CFR 60-1; 41 CFR 60-60; 41 CFR 60-471; 45 CFR 80; 45 CFR 84; 45 CFR 86; 45 CFR 90

75-02-04-16. Noncompliance.

1. The agency shall monitor all phases of the program to ensure compliance with all program requirements. Any finding of noncompliance by any party to the agreement shall be supported by a written report stating the factual basis for the finding of noncompliance. A copy of the report shall be provided to the party found not to be in compliance. If the party found not to be in compliance makes a written response or requests a meeting with the agency, within ten days of receipt of the report, the response or the results of the meeting shall be considered in determining the appropriate remedial action.
2. Appropriate remedial action may include the withholding or termination of all funds generated by the program from the party involved. The party affected shall receive written notice of the remedial action which the agency will take.
3. Within ten days after notice of the remedial action, the party affected may appeal the decision to take remedial action. Appeals taken shall be governed by chapter 75-01-03, and the appellant shall be treated as a claimant thereunder.

History: Effective December 1, 1981.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-03